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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,579	09/22/2003	Howard Boilen	A25-017	9636

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EXAMINER

HAMILTON, ISAAC N

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/667,579

Applicant(s)

BOILEN, HOWARD

Examiner

Isaac N Hamilton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/24/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-13, drawn to a food processing device, classified in class 83, subclass 856.
 - II. Claims 14-16, drawn to a holder for foodstuffs, classified in class 83, subclass 452.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as cutting foodstuffs. Invention II has separate utility such as clamping something to be cut. See MPEP § 806.05(d).
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with applicant's representative, Mr. William J. Sappone, on 02/16/05, a provisional election was made without traverse to prosecute the invention of Group I, claims 1-13. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14-16 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

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5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "hinge 41" on page 6, line 11. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

6. Claims 2, 5, 9 and 11 are is objected to because of the following informalities: "claim 2" in claims 2, line 1, should be changed to --claim 1--; in claim 5, a space is needed between "1" and "wherein"; claim 9, line 1, "letting" should be deleted; in claim 11, line 1, "Th" should be changed to --The--, and "side" in line 2, should be changed to --sides--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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8. Claims 1, 2, 8 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Denter et al (4,573,387), hereafter Denter. Denter discloses flat working surface 3; means for processing 5, 6, 7, 8; means for adjusting 13; side walls 24, 25; recesses shown in figures 2-4 at the bottom of the side walls; slicing blade 6; ribs 39, 40; height of ribs in figure 4.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-4, 7-10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zeder et al (US2004/0216579 A1), hereafter Zeder, in view of Denter. Zeder discloses flat working surface 32; means for processing 76, 45, 46; means for adjusting on page 4, paragraph [0035]; side walls 12, 13; slicing blades 76, 45, 46; vertical blades 76; horizontal blade 46, 45; removable auxiliary blade 46, 45; flat horizontal blade 45; wavy horizontal blade 46. Zeder does not disclose recesses, however, Denter teaches recesses on the bottom of the side walls in figures 2-4. It would have been obvious to provide recesses in Zeder as taught by Denter in order to provide a wavy gripping surface for the user, which creates friction with a user's wet hand.

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Zeder and Denter as applied to claims 1-4, 7-10, 12 and 13 above, and further in view of Ranta (6,019,050). The combination discloses everything as noted above, and discloses an upper leg 60 in Zeder, but does not disclose a lower leg. However, Ranta teaches lower leg 46. It would

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have been obvious to provide a lower leg in the combination as taught by Ranta in order to stabilize the apparatus when it is being supported on a surface smaller than the apparatus.

12. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Denter and Zeder as applied to claims 1-4, 7-10, 12 and 13 above, and further in view of Doyel (4,212,431). The combination discloses everything as noted above, but does not disclose a food grating surface. However, Doyel teaches grating surface 109. It would have been obvious to replace the horizontal blade 45, 46 in Zeder with the grating surface 109 as taught by Doyel in order to increase the ways that the apparatus can manipulate food.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wong is cited for recesses; Boerner is cited for a wavy blade; Harris is cited for a wavy blade and a grating surface; Vincent is cited for removable blades.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac Hamilton whose telephone number is 571-272-4509. The examiner can normally be reached on Monday through Friday between 8am and 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



IH

February 24, 2005



Allan N. Shoap
Supervisory Patent Examiner
Group 3700